

AMENDED IN SENATE MAY 13, 2003
AMENDED IN SENATE APRIL 30, 2003
AMENDED IN SENATE MARCH 6, 2003

SENATE BILL

No. 113

Introduced by Senator Ackerman

February 3, 2003

An act to amend Section 1281.5 of the Code of Civil Procedure, relating to mechanic's liens.

LEGISLATIVE COUNSEL'S DIGEST

SB 113, as amended, Ackerman. Mechanic's liens.

Existing law provides that any person who records and enforces a mechanic's lien does not waive any right of arbitration if the claimant, in filing an action to enforce the lien, simultaneously presents an application to the court to stay the action pending arbitration, as specified.

This bill would revise that provision to instead apply if the claimant either (1) includes an allegation in the complaint that the claimant does not intend to waive any right of arbitration and intends to move, within 30 days after service of the summons and complaint, for an order to stay further proceedings in the action, or (2) files an application, at the same time the complaint is filed, that the action be stayed pending arbitration. The bill would also require the claimant to file and serve a motion to stay the action pending the arbitration of any issue, question, or dispute that is claimed to be arbitrable under the agreement and that is relevant to the action to enforce the claim of lien *within 30 days after service of the summons and complaint. The failure of a claimant to comply with this*

provision would waive the claimant's right to compel arbitration. The bill would also make technical changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1281.5 of the Code of Civil Procedure
2 is amended to read:

3 1281.5. (a) Any person who proceeds to record and enforce
4 a claim of lien by commencement of an action pursuant to Title 15
5 (commencing with Section 3082) of Part 4 of Division 3 of the
6 Civil Code, does not thereby waive any right of arbitration the
7 person may have pursuant to a written agreement to arbitrate, if,
8 in filing an action to enforce the claim of lien, the claimant does
9 either of the following:

10 (1) Includes an allegation in the complaint that the claimant
11 does not intend to waive any right of arbitration, and intends to
12 move the court, within 30 days after service of the summons and
13 complaint, for an order to stay further proceedings in the action.

14 (2) At the same time that the complaint is filed, the claimant
15 files an application that the action be stayed pending the arbitration
16 of any issue, question, or dispute that is claimed to be arbitrable
17 under the agreement and that is relevant to the action to enforce the
18 claim of lien.

19 (b) Within 30 days after service of the summons and complaint,
20 the claimant shall file and serve a motion and notice of motion
21 pursuant to Section 1281.4 to stay the action pending the
22 arbitration of any issue, question, or dispute that is claimed to be
23 arbitrable under the agreement and that is relevant to the action to
24 enforce the claim of lien. *The failure of a claimant to comply with*
25 *this subdivision is a waiver of the claimant's right to compel*
26 *arbitration.*

27 (c) The failure of a defendant to file a petition pursuant to
28 Section 1281.2 at or before the time the defendant answers the
29 complaint filed pursuant to subdivision (a) is a waiver of the
30 defendant's right to compel arbitration.

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